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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re. . .

**DAN & CONNIE LYND, INC. d/b/a
COLVILLE ARBY'S,**

Debtor.

Case No. **08-05098-PCW11**
Chapter **11**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE:
CONFIRMATION OF PLAN OF
REORGANIZATION**

This matter came on for hearing upon the Plan of Reorganization that was filed by Dan & Connie Lynds, Inc. d/b/a Colville Arby's ("Lynds, Inc.") on June 9, 2009. The Court considered the comments of counsel, and the records and files herein, including the following:

- Combined Disclosure Statement And Plan Of Reorganization [Docket No. 96];
- Notice Of Hearing On Disclosure Statement And Confirmation Of Plan, Time For Objecting To Disclosure Statement Or Plan, And Time For Filing Ballots [Docket No. 97];
- Order Allowing Combined Disclosure Statement And Plan, Conditionally Approving Combined Disclosure Statement And Plan, And Setting Deadlines And Confirmation Hearing [Docket No. 88];
- List Classifying Claims And Interests [Docket No. 98];

- Report Of Balloting *[Docket No. 104]*; and
- Declaration Of Danial A. Lynds In Support Of Confirmation Of Plan Of Reorganization *[Docket No. 110]*;

Based on the foregoing, the Court enters the following FINDINGS OF FACT:

1. Lynds, Inc. filed a combined Disclosure Statement And Plan Of Reorganization on June 9, 2009.

2. On May 22, 2009, following appropriate motion and notice, the Court entered an Order Allowing Combined Disclosure Statement And Plan, Conditionally Approving Combined Disclosure Statement And Plan, And Setting Deadlines And Confirmation Hearing (the "Order").

3. Pursuant to the Order, Lynds, Inc. transmitted the combined Disclosure Statement and Plan of Reorganization (the "Plan"), and related materials, to the Master Mailing List on June 9, 2009.

4. The Plan contains no unusual classifications of claims or interest. Similar claims are classified together, and are treated equally within each class. The Plan provides the same treatment for each claim or interest within a particular class.

5. Lynds, Inc. did not solicit acceptances or rejections of the Plan except as authorized by the Order.

6. The Plan proposes to pay general unsecured creditors in full, without interest.

1 7. The Plan has been proposed in good faith and not by any means
2 forbidden by law.

3 8. The compensation of Davidson Backman Medeiros PLLC and Ralph
4 Coston for services rendered through the Confirmation Date will be subject to
5 Court approval after notice and hearing. Davidson Backman Medeiros PLLC and
6 Ralph Coston will be employed after confirmation at their normal and usual
7 hourly rates, plus reimbursement for expenses.
8

9 9. Lynds, Inc. will continue operating its business under the
10 management of Danial A. Lynds, Constance S. Lynds, and Stacey L. Lynds,
11 whose identity and compensation has been disclosed. The continuance in office
12 of such individuals is consistent with the interests of creditors and equity
13 security holders and with public policy. There will be no other insiders employed
14 or retained after reorganization.
15

16 10. The Plan provides for no rate changes after confirmation of the Plan
17 with any governmental regulatory commission with jurisdiction over the rates of
18 Lynds, Inc.
19

20 11. No objections to confirmation of the Plan were filed.
21

22 12. Lynds, Inc. and the United States of America, Internal Revenue
23 Service, have agreed to include provisions in the proposed Order Confirming Plan
24 of Reorganization providing that the Plan will be modified to provide that the
25 provisions on page 24, lines 7 through 12, of the Plan regarding the priority claim

1 of the Internal Revenue Service as to the exercise of its normal administrative
2 collection procedures in the event of an uncured payment default under the Plan,
3 and that no claim of the Internal Revenue Service shall be discharged until fully
4 paid in accordance with the Plan, shall apply to all claims of the Internal Revenue
5 Service provided for under the Plan, including, but not limited to the secured,
6 priority, and non-priority claims of the Internal Revenue Service, and that in the
7 event of a sale of all or part of the assets of Lynds, Inc. as proposed in the Plan,
8 Lynds, Inc. will hold back sufficient funds from the net sale proceeds to pay any
9 taxes owed to the Internal Revenue Service as a result of such sale.
10
11

12 13. Class 2 and Class 4 are impaired. All votes received were from
13 creditors within Class 2 and Class 4. One hundred percent (100%) by amount
14 and one hundred percent (100%) by number of those who cast votes voted to
15 accept the Plan.
16

17 14. According to the Declaration of Danial A. Lynds and the Liquidation
18 Analysis, creditors will receive a greater distribution under the Plan than would
19 be received if the assets of Lynds, Inc. were liquidated by a Chapter 7 Trustee or
20 by any other means.
21

22 15. The Plan provides for the financial reorganization of Lynds, Inc., or
23 the sale of the Arby's restaurant and/or real property. Confirmation of the Plan is
24 not likely to be followed by the need for further financial reorganization of Lynds,
25 Inc.

1 16. The Plan provides for payment of administrative claims upon the
2 Effective Date, or upon allowance by the Court.

3 17. The Plan provides for payment of all U.S. Trustee fees when due,
4 through the closing of the case.

5 18. Lynds, Inc. sponsors no retiree benefits.

6 Based on the foregoing FINDINGS OF FACT, the Court enters the following
7 CONCLUSIONS OF LAW:
8

9 1. The Plan has been accepted in writing by the creditors and equity
10 security holders whose acceptance is required by law; and

11 2. The provisions of Chapter 11 have been complied with; the Plan has
12 been proposed in good faith and not by means forbidden by law; and

13 3. Each holder of a claim or interest has accepted the Plan or will
14 receive or retain under the Plan, property of a value, as of the Effective Date of the
15 Plan, that is not less than the amount that such holder would receive or retain if
16 Lynds, Inc. were liquidated under Chapter 7 of the Code on such date, or the Plan
17 does not discriminate unfairly, and is fair and equitable with respect to each class
18 of claims or interests that are impaired under the Plan and has not accepted the
19 Plan; and
20

21 4. All payments made or promised by Lynds, Inc. or by a person issuing
22 securities or acquiring property under the Plan or by any other person for
23 services or for costs and expenses in, or in connection with, the Plan and incident
24
25

1 to the case, have been fully disclosed to the Court and are reasonable or, if to be
2 fixed after confirmation of the Plan, will be subject to approval of the Court; and
3

4 5. The identity, qualifications, and affiliations of the persons who are to
5 be directors or officers, if any, of Lynds, Inc. after confirmation of the Plan have
6 been fully disclosed, and the appointment of such persons to such offices or the
7 continued appointment of such persons to such offices, or their continuance
8 therein, is equitable and consistent with the interests of the creditors and equity
9 security holders and with public policy; and
10

11 6. The identity of any insider that will be employed or retained by
12 Lynds, Inc. and their compensation has been fully disclosed; and
13


14 7. Confirmation of the Plan is not likely to be followed by the need for
15 further financial reorganization of Lynds, Inc.; and
16

17 8. The Plan shall be substantially consummated pursuant to 11 USC
18 1101(2) upon assumption by Lynds, Inc. of the management of the property dealt
19 with under the Plan, upon full payment of all administrative expenses, and upon
20 the conclusion of all adversary and contested matters.

21 Presented by:

22 DAVIDSON BACKMAN MEDEIROS PLLC

23 /s/ Bruce K. Medeiros
24 Bruce K. Medeiros, WSBA No. 16380
25 Attorney for Dan & Connie Lynds, Inc.
d/b/a Colville Arby's


Patricia C. Williams
Bankruptcy Judge

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